



Kenya Power & Lighting Company Limited v Mutembei (Civil Appeal E033 of 2022) [2023] KEHC 870 (KLR) (9 February 2023) (Judgment)

Neutral citation: [2023] KEHC 870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E033 OF 2022
TW CHERERE, J
FEBRUARY 9, 2023**

BETWEEN

KENYA POWER & LIGHTING COMPANY LIMITED APPELLANT

AND

STEPHEN MUTEMBEI RESPONDENT

(Being an Appeal from the Judgment and Decree in Maua CMCC E008 OF 2021 by Hon. T.Gesora (CM) on 17th February, 2022)

JUDGMENT

1. This judgment relates only to quantum the issue of liability having been determined on November 3, 2022.
2. At the hearing, the Respondent prayed for a total of KES. 28, 300,000/- quantified as KES. 5 million general damages, KES. 2 million lost earnings and KES. 20,300,000/- for future medical expenses. Appellant on the other hand offered KES. 3,300,000/- which include KES. 1,700,000/- general damages, KES. 920,000/- future medical expenses, KES. 700,000/- for lost earnings and KES. 10,000/- special damages. Both parties cited various authorities in support of their propositions.
3. The learned trial magistrate awarded KES. 20,000,000/- which sum the Appellant challenges on the ground that it is excessive.
4. Quantum is a matter of judicial discretion which can only be interfered with if the court is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. (See *Mbogov Shab*(1968) EA 93 and *Kemfro Africa Limited t/a Meru Express Services (1976) & anor. vs Lubia & anor, No. 2* [1987] KLR 30).



5. The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR settled the principles to be applied in assessing damages and stated that:

Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases. (Emphasis added).

6. Concerning general damages for pain, suffering and loss of amenities, the trial court relied on the persuasive decision in *Kenya Power & Lighting Company Limited v Kassim Wekhoba Tolo & another* [2019] eKLR where KES. 5,425,328/= was awarded for various injuries with a 90% permanent incapacity.
7. Dr. Mwiti's report dated August 30, 2020 reveals that Appellant suffered:
- i. 3rd degree abdominal burns - 9 % total body surface area
 - ii. 3rd degree burns on left upper limb - 9 % total body surface area
 - iii. 2nd and 3rd degree burns on left lower limb - 18 % total body surface area
 - iv. 2nd degree burns on right lower limb- 18 % total body surface area
 - v. Cuts on lower and upper lips
 - vi. Burns on right index finger
 - vii. Burns on right sole of foot
 - viii. Right hallux toe paralysis
8. As a result of the injuries, the Respondents received the following treatment.
- i. The left hand was amputated at the shoulder joint
 - ii. The left lower limb was amputated at the knee
 - iii. Wounds on right lower limb and abdomen were grafted
 - iv. Surgical toileting of other wounds
9. The doctor assessed permanent incapacity at 100%. Respondent is confined to a wheelchair and relies on his family for his mobility and support.
10. From the foregoing, I find that the learned trial magistrate correctly applied the principle of comparable injuries and I do not find any reasonable cause to interfere with the award of KES. 5,000,000/- on general damages.
11. With reference to special damages, the sum of KES. 55,000/- was pleaded and proved and correctly awarded.
12. Concerning future medical expenses, one John Machoka, an orthopaedic technologist by his report dated March 19, 2021 produced as PEXH. 5 assessed the cost of functional myoelectric prosthesis (artificial hand) at KES. 15,000,000/- and transibial prosthesis (artificial leg) at KES. 1,500,000/-.
13. There was no other medical report to counter John Machoka's report dated March 19, 2021 produced as PEXH. 5 that Respondent would require a functional myoelectric prosthesis (artificial hand) at



the cost of KES. 15,000,000/-. The Appellant did not object to the production of the report nor request that its maker testifies. That being the only report that was placed before the trial court, the trial magistrate rightly found that the said sum of KES. 15,000,000/- was proved. As rightly noted by the trial magistrate, the cost of maintenance of myoelectric prosthesis and transibial prosthesis at KES. 1,500,000/- was neither pleaded nor proved.

14. The sum of KES. 55,000/- for special damages was pleaded and proved and rightly awarded. Similarly, the sum of KES. 1,000,000/- for lost earnings was in the circumstances of this case reasonable.
15. From the foregoing analysis and for the reasons given by the trial court, I find that the sum proved exceeded the pecuniary jurisdiction of the trial magistrate and the sum of KES 20,000,000/- was therefore warranted.
16. From the foregoing, I uphold the award made by the trial magistrate and dismiss the appeal with costs to the Respondent.

DATED AT MERU THIS 09TH DAY OF FEBRUARY 2023

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant - Mr. Kimaita for Wambugu & Muriuki & Co. Advocates

For Respondent - Ms. Asuma for Mutembei & Kimathi & Co. Advocates

